

1857-001 Chancery Causes: John M. Beatty vs. John F. Howard
Lee Co.

CA-Debt

To the worshipful County Court of Lee County, in chancery sitting, the bill of complaint of John M. Beaty, of said County, respectfully represents:

That at the term of the Circuit Court of said County held in May 1856 a judgment was rendered in the said Court, in substance for your orator, in an action of Debt brought in that Court in the name of Joseph H. Bundy, who sued for your orator's benefit, against John F. Howard, of said County, for \$498.00 with legal interest thereon from the 18th day of October 1854 till paid, and the costs of the suit, amounting to \$. Two executions of Fieri facias have been thereon issued, both of which were returned "No property found". Subsequent to the return of the last of these, which was returned to February rules 1857, the said Howard was summoned, at the instance of your orator, to appear before a Commissioner of the said Circuit Court, to answer interrogatories and give a schedule of all his estate, pursuant to the provisions of the Statute, and accordingly he did appear on the 16th day of March 1857 before John D. Sharp who was such Commissioner, and in answer to interrogatories then & there propounded to him he made before said Commissioner a schedule of his estate of every kind — a copy ^{of said judgment, and} of the said summon with the endorsements thereon, and of the said interrogatories and schedule, are filed herewith marked (A.) Your orator will also exhibit, if it shall be deemed necessary, copies of the said executions & the returns thereon. The person ^{any}ally embraced in said schedule was not delivered, or ^{any} part thereof, as your orator is informed & believes, to the Sheriff, and nothing has been made, as he understands, towards said judgment; and, by a singular inadvertence on the part of the General Assembly, the Sheriff has no authority by Statute to sell lands of a debtor so embraced in such schedule, nor is the debtor required to convey them to him — such conveyance & authority in the Sheriff to sell

being limited by law to such lands surrendered by the debtor as lie out of the Commonwealth. No part of the said judgment has yet been paid to your Orator, and he is informed & believes that nothing has been paid towards its discharge to the Sheriff.

The prayer of your orator therefore is, that the said John F. Howard be made a party defendant to this bill, and be required to answer its allegations truly on his oath; that he be required by a decree of your worships to deliver to the Sheriff of this County, or to one of his deputies, the personal property contained in the said schedule, and that the same be sold by such sheriff or his deputy and the proceeds applied to the said judgment, and should the amount of such proceeds be insufficient to discharge the same, that the said Sheriff or his deputy, or some other fit person, be decreed to sell the lands contained in said schedule, or such or so much thereof as may be sufficient to discharge ^{remainder of the} the said judgment, and the costs of this suit; and that the proceeds of sale be so applied —; And that such other and general relief be extended to your orator as may consist with equity this case may require.

May it please your worships to grant the Commonwealth writ of Spas, directed &c.

Johnston, for Compl't.

(J.)
John M. Beatty

W. } Bill, Chy-

John F. Howard

Re 2 March Rules set for the

" April Rules Continued,
April Term, order of
dismissal by conspect.

rest and margins - Receipts,

John M. Beatty vs. J. F. Howard - Chy.

This cause came on this day to be heard upon the bill of the Compt. & the exhibits filed, and was argued by counsel; And the Sp^{ea} issued against the def^t in this cause having been executed more than two months, and he still failing to appear and answer the Compt's bill, the same is taken for confessed; And it appearing, that no part of the judgment mentioned in the Compt's bill has yet been made by the executions issued thereon or paid in any manner, and that on the 16th day of March 1857 the defendant ~~was summoned~~ and appeared in obedience to a summons issued by a Commissioner before said Commt. and rendered a schedule of all his effects consisting of some personal property and sundry tracts of land, as shown by exhibit (A) filed with the Compt's bill, and the personal property aforesaid not having been delivered to the Sheriff of this County; It is therefore adjudged, ordered, & decreed, that the ^{defendant deliver to the Sheriff of this County forthwith} ~~the Sheriff of this County take possession of~~ the said personally, or ~~so much thereof as he can get possession of,~~ ^{so deliver} and sell the same for cash in the manner in which such property is required by law to be sold under an execution levied thereon; and if the proceeds of such sale should not be sufficient to discharge the said judgment, together with the costs of this suit, or if the said Sheriff shall not be able to obtain ^{for sale any part of} the said personally ~~or any part thereof~~, then Henry J. Morgan, who is hereby appointed a Commissioner for the purpose, shall proceed to sell the said lands, or so much thereof as may be sufficient to discharge the said judgment and the said costs, or so much thereof as may remain unpaid, at the front door of the Court House of this County, on some Court day, at public outcry, to the highest bidder, for cash, after having advertised the time & place of such sale at ^{at least thirty days} the front door of the Court House of this County & at such other places ^{in the neighborhood of said lands} as may be calculated to give good notice of such sale, and in making such sale of said lands, the said Commt. is to sell

first the outer tracts in the schedule in exhibit (A.) shown, and if they should prove insufficient to pay the said judgment and the costs aforesaid, then only he is to proceed to sell the tract of 143 acres and last the tract of 150 acres in exhibit (A.) mentioned; and apply the proceeds of such sales of personal property & land to the discharge of the said judgment and costs; And it is further adjudged, ordered, and decreed, that the Comptee recover against the defendant his costs of this suit.

Jm. Beatty

vs. } Decree.

J. H. Howard

Nov. Term 1857.